



California Fair Political Practices Commission

December 27, 1989

Honorable Don MacAllister
City Councilmember
City of Huntington Beach
1121 Park St.
Huntington Beach, CA 92648

Re: Your Request for Informal Assistance
Our File No. I-89-537

Dear Councilmember MacAllister:

This letter is in response to your request for advice concerning your duties and responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Your letter does not provide sufficient facts to render specific advice. Accordingly, we are treating your request as one for informal assistance.²

QUESTION

Can you participate in governmental decisions regarding real property on which a first trust deed is held by a bank for which you are a shareholder and paid director?

CONCLUSION

You may participate in decisions regarding the real property so long as the effect of the decisions would not foreseeably affect the bank in a material way.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You are a member of the City of Huntington Beach City Council, and the city's Redevelopment Agency. You are also a director and shareholder of the Huntington National Bank, doing business in the City of Huntington Beach. As a director of the bank, you receive income in the amount of \$700 per month from the bank. You own approximately 3% of the shares of the bank.

The bank has loaned money to the redevelopment agency for a piece of property in one of the city's redevelopment project areas. The project area is called "Main-Pier," which includes a subarea encompassing two city blocks called "Main Pier Phase II." The real property in which the bank has an interest is located within this subarea and is known as the "Terry Buick" site.

The property was acquired by the redevelopment agency under threat of condemnation. The loan from the bank is for \$880,000 and is secured by a first trust deed on the property, which is valued at \$1,800,00. The loan remains outstanding and is paid current. You believe that the bank is not affected by any change in the value of the property.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (a)-(e).

As a member of the city council, you are a public official. (Section 82048.) Since you are a paid director, and shareholder of the Huntington National Bank, you would have a financial interest in any decision which will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the bank. (Sections 87103(a)(c) and (d).)³

Foreseeable Material Financial Effect

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Redevelopment Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198, In re Legan (1985) 9 FPPC Ops. 1 (copies enclosed).)

The Commission has adopted regulations which provide guidance in determining whether the foreseeable effects of a particular governmental decision on a business entity are material. (Regulation 18702.2 copy enclosed.) The standard for disqualification in these regulations differs, depending on the financial size of the business entity.

The bank has a net worth of approximately \$85 million and is qualified for public sale in California. It is, therefore, a business entity which would fall within Regulation 18702.2(c), which provides that the financial effect on a business entity is material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

³ Section 82033 provides that an "interest in real property" includes a "pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent or interest or greater." Since you do not have a 10-percent or greater interest in the bank, you do not have an interest in the real property holdings of the bank.

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.


You have stated that it is your belief that the decisions of the redevelopment agency will have no effect on the bank, even if the value of the real property is affected. You have not provided us with facts regarding the specific decisions before the redevelopment agency which involve the "Terry Buick" site. It would appear, however, that should the decisions of the redevelopment agency lower the value of the property to the extent that the property is no longer worth the amount loaned by the bank, the decision would affect the bank. Thus, it is foreseeable that a decision of the redevelopment agency could have a financial effect on the bank.

The threshold for disqualification in a decision affecting the bank, however, is an effect on the gross revenues or assets of the bank of \$30,000 or more, or an increase or decrease in expenses of \$7,500 or more. In the instant case, it is the note and deed of trust on the property which is the asset of the bank, not the real property itself. Absent special circumstances articulated in the loan agreement, or a decision before the redevelopment agency which would foreseeably decrease the value of the property by more than \$1 million or establish some special fee in the amount of \$7,500 or more, it is unlikely that a decision of the redevelopment agency would affect the bank's lien on the property by \$30,000, or its expenses by \$7,500. Thus, unless these unique circumstances were present, you would not be prohibited by the conflict-of-interest provisions of the Act from participating in decisions regarding the "Terry Buick" property.

If you have any questions regarding this analysis, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Lilly Spitz
Counsel, Legal Division

KED:LS:ld

Enclosures



Don MacAllister

1121 Park St., Huntington Beach, Calif. 92648 (714) 960-2892

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September 11, 1989

Kathryn Donovan, Esq.
Fair Political Practices Commission
P. O. Box 807
428 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice Letter [Gov't Code § 83114 (b)]

Dear Ms. Donovan:

I am a member of the City Council and the Redevelopment Agency ("RA") of the City of Huntington Beach. (Members of the City Council constitute the members of the RA.) Some comments have come up concerning my position as a director and shareholder of the Huntington National Bank ("HNB"). I am paid \$700 a month as a director and own about 3% (worth more than \$1,000) of the approximately 438,000 outstanding shares in HNB.

Before I was elected to the City Council last November 1988, HNB loaned money to the RA on a piece of property on Fifth Street in one of the city's redevelopment project areas. The property is the "Terry Buick" site acquired by the RA under threat of condemnation. This downtown redevelopment project area is called "Main-Pier." The project in question is a subarea called "Main Pier Phase II" and encompasses two city blocks bounded by Main Street, Sixth Street, Pacific Coast Highway, and Walnut Street. This loan is secured by a first trust deed on the property. The loan remains outstanding, is paid current, and the value of the property greatly exceeds the amount of the loan. (The loan is for \$880,000 and the property is valued at \$1,800,000.) The bank does not have any fee ownership interest in the property, and its only interest is the security interest as a lender under the deed of trust. (This is a mere lien upon the property - See Witkin, Summary of California Law, "Security Transactions in Real Property," §6.) The bank is not affected by any change in value of the property.

I need guidance on whether I am required to disqualify myself from voting on any matters involving the redevelopment area in which this secured property is located.

I understand that the interest I hold in HNB is the subject of a current investigation as a result of a citizen's complaint. The investigation, being reviewed by Elliot Block, Esq., concerns a vote taken by the RA on May 1, 1989, to approve a development proposal in concept for the subarea. Part of this approval included a direction to maintain Fifth Street open to pedestrian and vehicular traffic.

It is important to resolve the issue concerning my voting, because many items on this active redevelopment area are likely to come to the RA and City Council in the immediate future. Later this month a land use plan for conceptual design of the area will come to the RA for approval, and after that a Disposition and Development Agreement will come to the RA and Council.

The City Attorney's office, by Deputy City Attorney Robert Sangster, has reviewed this issue and assisted in the preparation of this letter. It is his opinion that I do not have a financial interest in decisions concerning the redevelopment project area because it is not reasonably foreseeable that any pending decision will have a material financial effect, distinguishable from its effect on the public generally, on the security interest held by the bank.

Please feel free to contact him (714-536-5555) or me if you have any questions. My work phone is (714) 898-6100.

Thank you for your help.

Yours truly,

A handwritten signature in black ink, appearing to read 'Don MacAllister', with a stylized, flowing script.

Don MacAllister

cc: Robert C. Sangster, Esq.



California Fair Political Practices Commission

September 20, 1989

Honorable Don MacAllister
Councilmember
1121 Park Street
Huntington Beach, CA 92648

Re: Letter No. 89-537

Dear Councilmember MacAllister:

Your letter requesting advice under the Political Reform Act was received on September 14, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh